

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL NO. 1:05CR60  
(Judge Keeley)

LAWRENCE BENNETT,

Defendant.

**ORDER ACCEPTING AND ADOPTING MAGISTRATE JUDGE'S  
RECOMMENDATION THAT DEFENDANT'S GUILTY PLEA  
BE ACCEPTED AND SCHEDULING SENTENCING HEARING**

On October 31, 2005, defendant, Lawrence Bennett, appeared before United States Magistrate Judge John S. Kaul and moved this Court for permission to enter a plea of GUILTY to count seven of the Indictment. The defendant stated that he understood that the magistrate judge is not a United States District Judge, and consented to pleading before the magistrate judge. This Court had referred the guilty plea to the magistrate judge for the purposes of administering the allocution pursuant to Federal Rule of Criminal Procedure 11, making a finding as to whether the plea was knowingly and voluntarily entered, and recommending to this Court whether the plea should be accepted.

Based upon the defendant's statements during the plea hearing and the testimony of United States Postal Inspector Anthony P.

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Branch, the magistrate judge found that the defendant was competent to enter a plea, that the plea was freely and voluntarily given, that the defendant was aware of the nature of the charges against him and the consequences of the charges against him and the consequences of his plea, and that a factual basis existed for the tendered plea. On November 2, 2005, the magistrate judge entered an order finding a factual basis for the plea and recommended that this Court accept the plea of guilty to count seven of the Indictment.

The magistrate judge also directed the parties to file any written objections to the report and recommendation within ten (10) days after service of the report and recommendation. The magistrate judge further directed that failure to file objections would result in a waiver of the right to appeal from a judgment of this Court based on the report and recommendation.

The parties did not file any objections. Accordingly, this Court finds that the magistrate judge's recommendation should be **AFFIRMED** and **ACCEPTS** the plea of guilty to count seven of the Indictment.

The Court **ADJUGES** the defendant **GUILTY** of the crime charged in count seven. Pursuant to Fed. R. Crim. P. 11(e)(2) and U.S.S.G.

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§ 6B1.1(c), acceptance of the proposed plea agreement and stipulated addendum to the plea agreement, is **DEFERRED** until the Court has received and reviewed the presentence report prepared in this matter.

On November 4, 2005, the Court received a letter from counsel for the defendant, Brian J. Kornbrath, dated November 2, 2005, requesting a waiver of a full pre-sentence report in order to allow Mr. Bennett to be sentenced and returned to California prior to the holidays. The Court notes that the probation officer disclosed the presentence report to defense counsel and the United States on November 14, 2005, and, pursuant to Fed. R. Crim. P. 32(b)(6)(A), did not disclose the sentencing recommendations.

Accordingly, the Court directs:

1. Counsel shall file **WRITTEN OBJECTIONS** to the presentence report and may file a **SENTENCING MEMORANDUM** that evaluates sentencing factors the parties believe to be relevant under 18 U.S.C. § 3553(a) (including the sentencing range under the advisory Guidelines) and explains any proposed sentence, on or before **November 28, 2005;**

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2. The Office of Probation shall submit to the Court the presentence report with addendum on or before **December 9, 2005**; and

3. Sentencing is set for **December 16, 2005 at 9:00 a.m.**

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record, the defendant and all appropriate agencies.

DATED: November 16, 2005

  
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IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE